

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A REGULAR MEETING HELD ON
JULY 10, 2007

LOCATION: MACOMB TOWNSHIP MEETING CHAMBERS
54111 BROUGHTON ROAD, MACOMB, MI 48042

PRESENT: CHAIRMAN, BRIAN FLORENCE
MEMBERS: EDWARD GALLAGHER
NUNZIO PROVENZANO
VICTORIA SELVA
DAWN SLOSSON

ABSENT: NONE

ALSO PRESENT: COLLEEN O'CONNOR, TOWNSHIP ATTORNEY
JEROME R. SCHMEISER, PLANNING CONSULTANT
(Additional attendance record on file with Clerk)

Call Meeting to Order.

Chairman FLORENCE called the meeting to order at 7:00 P.M.

1. Roll Call.

Secretary SLOSSON called the Roll Call. All members present.

2. PLEDGE OF ALLEGIANCE.

3. Approval of Agenda Items. *(with any corrections)*
Note: All fees have been received and all property owners were notified by mail

MOTION by GALLAGHER seconded by PROVENZANO to approve the agenda as presented.

MOTION carried.

4. Approval of the previous meeting minutes:

MOTION by SELVA seconded by SLOSSON to approve the meeting minutes of May 8, 2007 as presented.

MOTION carried.

PURPOSE OF HEARING:

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To consider the requests for variance(s) of Zoning Ordinance No. 10 for the following:

Agenda Number/Petitioner/ Permanent Parcel No.	Zoning Ordinance Section No.
(5) Mark Grabow Permanent Parcel 08-04-400-030	Section 10.0402
(6) Lucilla Bigford Permanent Parcel 08-36-152-003	Section 10.0202
(7) Michael Boggio Permanent Parcel 08-34-300-014	Section 10.0323(10)(L) 10.0323(10)(L) 10.0339(A)
(8) David Kruszyna Permanent Parcel No. 08-01-176-023	Section 10.0311(5)(d)
5. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE; Section 10.0402-Request to allow the use of an AG zone for limousine service Located on the north side of 25 Mile Road, ¼ mile west of Broughton Road; Section 4; Mark Grabow, Petitioner. Permanent Parcel No. 08-04-400-030.	

Chairman FLORENCE stated the petitioner had submitted a letter dated July 9, 2007 seeking a tabling for the requested variance as follows:

“Please allow this correspondence to serve as my formal request to adjourn the above issue originally scheduled on the Township’s Planning Commission agenda for July 10, 2007 agenda to be tabled to a time specific. Please place the above referenced issue on the Township Planning commission’s agenda scheduled for September 11, 2007, at 7:00 p.m.”

Member SELVA asked how many times this item may be tabled.

Jerome R. Schmeiser, Planning Consultant, stated there was an ongoing court case involving the limousine service.

MOTION by GALLAGHER seconded by SELVA to table at the petitioners request the variance request of Section 10.0402-Request to allow the use of an AG zone for limousine service; located on the north side of 25 Mile Road, ¼ mile west of Broughton Road; Section 4; Mark Grabow, Petitioner. Permanent Parcel No. 08-04-400-030. The variance is tabled to November 13, 2007.

MOTION carried.

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6. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Section 10.0202 to allow the increase of a private garage from 624 square feet to 1344 square feet.
Located on north side of Maplevue, first house east of North Avenue; Section 36; Lucilla E. Bigford, Petitioner. Permanent Parcel No. 08-36-152-003.

Chairman FLORENCE stated the petitioner had submitted a letter dated June 4, 2007 which indicated they were no longer seeking the variance as follows:

“At the May 8th, 2007 Zoning Board meeting it was suggested by the board members and agreed by the petitioner, to table the board decision on the variance request for enlarging the existing attached garage. It was advised to change the description and location of the new building, and resubmit a new building permit application to the township, with these changes.

The week of May 20th, 2007, a new building permit for the smaller separated building (workshop and breezeway) had been approved by the Macomb Township Building Department.

At this time, we are no longer seeking or requesting a variance for the enlarged attached garage, from the Zoning Board and Township.

We would also like to thank the board and Township for all their help in finding an alternate way for the new approved building.”

MOTION by SELVA seconded by GALLAGHER to receive and file the petitioner's letter of June 4, 2007.

MOTION carried.

7. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Section 10.0323(10)L-Request to reduce the 5' wide walk required between the driveway to the building to 0', at the south end of the 80' building.
Section 10.0323(10)L-Request to reduce the 4' paving setback to 0' at existing common drives south and east of the building.
Section 10.0339(a)-Request to hold in abeyance the 5' sidewalk along Macomb Center Drive and the 8' asphalt pathway along Hall Road until both properties are constructed.
Located on North side of Hall Road at Macomb Center Drive; Section 34; Michael Boggio, Petitioner. Permanent Parcel No. 08-34-300-014.

Chairman FLORENCE read the findings and recommendation of July 5, 2007. They are as follows:

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The petitioner is requesting variances in connection with the redevelopment of commercial facilities on the northwest corner of Hall and Macomb Center Drive, excluding the immediate corner.

RECOMMENDATION:

Permission to vary Section: 10.0323(10)L-Request to reduce the 5' wide walk required between the driveway to the building to 0', at the south end of the 80' building.

It is recommended that the variance request as noted above be approved since the structure at issue was part of a previously approved site plan in accordance with the zoning ordinance as written at that time. To impose the ordinance as currently written to this part of the site would require that a portion of the structure would have to be removed. There is no available land on subject parcel that the proprietor could use to meet Section: 10.0323(10)L. If however, the south building is ever removed or a portion removed that makes space available on either the south or west elevation; then a 5 ft. walk as required must be built in accordance with Section 10.0323(10)L.

Permission to vary Section 10.0323(10)L-Request to reduce the 4' paving setback to 0' at existing common drives south and east of the building.

It is recommended that the variance request as noted above be approved since the portion of the site at issue was part of a previously approved site plan in accordance with the zoning ordinance as written at that time. The imposition of the ordinance as written to this portion of subject site would interfere with traffic movement to and from the site.

Permission to vary Section 10.0339(a)-Request to hold in abeyance the 5' sidewalk along Macomb Center Drive and the 8' asphalt pathway along Hall Road until both properties are constructed.

It is recommended that the variance request as noted above be set aside. The issue before the ZBA is one that relates more to Township Board and the Township Development Code than a zoning matter. If the Township Board either refuses to hear the issue or rejects the request the ZBA could review the matter and make a decision based on the record established at the Township Board.

Tom Guastello, petitioner, was in attendance and indicated they were trying to improve on the existing establishment (land, parking lot, façade, etc) and if they had to comply with the ordinances they buildings would have to be torn down.

Chairman FLORENCE stated that each item would be considered separately.

Public Portion: None.

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MOTION by SLOSSON seconded by SELVA to close the public portion.

MOTION carried.

The following resolution was offered by SELVA and seconded by SLOSSON:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied, and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved, that the action of the Board is to grant the requested variance of Section 10.0323(10)(L)-Request to eliminate 5 foot walk required between drive to building to 0 feet at the south 80 feet of building; Located on the north side of Hall Road at Macomb Center Drive, Section 34; Michael Boggio, Petitioner. Permanent Parcel No. 08-34-300-014. The variance was approved conditioned on the following: "If however, the south building is ever removed or a portion removed that makes space available on either the south or west elevation; then a 5 ft. walk as required must be built in accordance with Section 10.0323(10)(L).

MOTION carried.

2nd variance request

Public Portion: None.

MOTION by SLOSSON seconded by PROVENZANO to close the public portion.

MOTION carried.

The following resolution was offered by SELVA and seconded by SLOSSON:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied, and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

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Now, therefore, be it resolved, that the action of the Board is to grant the requested variance of Section 10.0323(10)(L)-Request to eliminate 4 foot paving setback to 0 foot setback at existing common drive south and east of building; Located on the north side of Hall Road at Macomb Center Drive; Section 34; Michael Boggio, Petitioner. Permanent Parcel No. 08-34-300-014. The variance was approved since the imposition of the ordinance as written to this portion of subject site would interfere with traffic movement to and from the site.

MOTION carried.

3rd variance request

MOTION by SELVA seconded by PROVENZANO to table until September 11, 2007 the variance request of Section 10.0339(a)-Request to hold in abeyance the 5 foot wide sidewalk along Macomb Center Drive and the 8 foot asphalt pathway along Hall Road until both properties are constructed; Located on the north side of Hall Road at Macomb Center Drive; Section 34; Michael Boggio, Petitioner. Permanent Parcel No. 08-34-300-014. The variance was tabled in order to allow the Township Board of Trustees to hear the request and give a decision.

MOTION carried.

Member SELVA questioned if there should be a notation made within the variance if it should remain in effect if the building were ever torn down that it does not run with the land.

Colleen O'Connor, Township Attorney, stated the variance runs with the land. So the next person who may purchase the land may take advantage of the variance granted.

Jerome R. Schmeiser, stated if the south portion of the building were destroyed and rebuilt the then standards must be adhered to.

MOTION by PROVENZANO seconded by GALLAGHER to reopen the variance request of Section 10.0323(10)(L)-Request to eliminate 5 foot walk required between drive to building to 0 feet at the south 80 feet of the building.

MOTION carried.

The following resolution was offered by SELVA and seconded by SLOSSON:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied, and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and

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intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved, that the action of the Board is to grant the requested variance of Section 10.0323(10)(L)-Request to eliminate 5 foot walk required between drive to building to 0 feet at the south 80 feet of building; Located on the north side of Hall Road at Macomb Center Drive, Section 34; Michael Boggio, Petitioner. Permanent Parcel No. 08-34-300-014. The variance was approved conditioned on the following: "If however, the south building is ever removed or a portion removed that makes space available on either the south or west elevation; then a 5 ft. walk as required must be built in accordance with Section 10.0323(10)(L).

MOTION carried.

8. **VARIANCE REQUEST FROM ZONING ORDINANCE;**
Section 10.0331 to increase the height of a garage from 12' to 15'.
Located on North side of Hagen Road, ¼ Mile east of North Avenue; Section 1;
David Kruszyna, Petitioner. Permanent Parcel No. 08-01-176-023.

Chairman FLORENCE read the findings and recommendations of July 2, 2007. They are as follows:

The petitioner is requesting a variance to allow a taller garage by three (3) feet than is permitted by the zoning ordinance. The zoning ordinance relating to the size and height of accessory structures was amended in 2002.

Although the land is zoned R-1, the petitioner's parcel contains 1.5 acres in size. The existing house has been constructed with a 12/12 pitched roof and it is the petitioner's request that allowance be made so that the proposed accessory structure will match the design of the residence.

The garage as proposed would be located 10 ft. from the north and east property lines in the far northeast corner of the parcel. The garage as proposed would be approximately 120 ft. from the residence.

RECOMMENDATION:

It is recommended that the variance request be denied:

1. Compliance with the strict letter of the height requirement would not unreasonably prevent the ownership from using the property as zoned. Other accessory structures planned in Macomb Township will be required to comply with the same height requirement which is evidence that the proper height would not be unnecessarily burdensome.

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2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners with accessory structures in Macomb Township. The other owners are or will be required to comply with the height requirement.

There is nothing unusual about the parcel in question that sets it apart from other parcels in the Hagen Road area. There is nothing to prevent the accessory building from being built with a different pitch to allow for the structure to comply with the height requirement. For example, there are no significant grade differences or natural feature such as a stream or wetland on subject parcel to prevent full use of the parcel according to the ordinance as written.

David Kruszyna, petitioner, was in attendance and presented pictures of detached garages that were constructed in his neighborhood that were similar to what he was applying for. He also indicated that everyone had similar size lots to his.

Chairman FLORENCE stated that if the structures that were built by the neighbors were done so outside of the ordinance then there is action that can be taken against them.

Colleen O'Connor, Township Attorney, stated that each property owner must be treated equally. If this board were to grant you the variance desired then someone who lives within a subdivision and wanted the same variance but were denied, they could take the Township to court and they would win the lawsuit because a precedence had been set.

Public Portion:

Andrea Kruszyna stated they want to match their neighbors and to have the proposed garage match the look of their home.

Chairman FLORENCE stated there had been no previous requests that he could recall that allowed for the variance of the height of a structure within the area they are living. Furthermore, people do go forward with the construction of a building without ever applying for or receiving a building permit.

Member SELVA stated that because someone has built in error does not allow you to do the same. The submittal of the pictures and/or the acknowledgement that the structures which have been built and which may not conform to the ordinance may be violation and may be forced to be either torn down or to go to court to defend their action.

Chairman FLORENCE stated he understands the request however, there is no practical difficulty to allow this board to grant a variance.

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MOTION by SLOSSON seconded by SELVA to close the public portion.

MOTION carried.

MOTION by PROVENZANO seconded by GALLAGHER to deny the variance request of Section 10.0331 to increase the height of a garage from 12' to 15'; Located on North side of Hagen Road, ¼ Mile east of North Avenue; Section 1; David Kruszyna, Petitioner. Permanent Parcel No. 08-01-176-023. The variance was denied based upon the following:

- 1. Compliance with the strict letter of the height requirement would not unreasonably prevent the ownership from using the property as zoned. Other accessory structures planned in Macomb Township will be required to comply with the same height requirement which is evidence that the proper height would not be unnecessarily burdensome.**
- 2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners with accessory structures in Macomb Township. The other owners are or will be required to comply with the height requirement.**

There is nothing unusual about the parcel in question that sets it apart from other parcels in the Hagen Road area. There is nothing to prevent the accessory building from being built with a different pitch to allow for the structure to comply with the height requirement. For example, there are no significant grade differences or natural feature such as a stream or wetland on subject parcel to prevent full use of the parcel according to the ordinance as written.

MOTION carried.

9. OLD BUSINESS:

None.

10. NEW BUSINESS

None.

11. PLANNING CONSULTANTS COMMENTS

Jerome R. Schmeiser, Planning Consultant, stated there was a special meeting scheduled for July 24, 2007.

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12. MOTION TO RECEIVE AND FILE ALL CORRESPONDENCE IN
CONNECTION WITH THIS AGENDA

MOTION by SELVA seconded by SLOSSON to receive and file all correspondence.

MOTION carried.

ADJOURNMENT

**MOTION by SLOSSON seconded by GALLAGHER to adjourn the meeting at 7:55
P.M.**

MOTION carried.

Respectfully submitted,

Brian Florence, Chairman

Dawn Slosson, Secretary

Beckie Kavanagh, Recording Secretary

BK